

E-Filed 11/26/08

NOT FOR CITATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CATHY ENWERE,

Plaintiff,

V.

TERMAN APARTMENTS, LP, d/b/a G & K
MANAGEMENT CO.,

Defendants.

Case Number C 07-1239 JF (PVT)

ORDER¹ DENYING REQUEST TO VACATE HEARING

Plaintiff Cathy Enwere (“Plaintiff”) alleges that Defendant Terman Apartments, d/b/a G & K Management Co. (“Defendants”), illegally discriminated against her in her effort to obtain federally subsidized housing. Among other things, Plaintiff claims that she suffered emotional distress damages as a result of the discrimination. Defendant now seeks orders (1) compelling the San Mateo County Health Department to produce certain of Plaintiff’s medical records pursuant to Federal Rule of Civil Procedure 37, and (2) requiring Plaintiff to submit to a mental

¹ This disposition is not designated for publication in the official reports.

1 status examination pursuant to Federal Rule of Civil Procedure 35. In support of these requests,
 2 Defendant points out that the emotional distress which Plaintiff allegedly suffered as a result of
 3 Defendant's discriminatory conduct is the *only* source of damages claimed by Plaintiff in her
 4 lawsuit. A hearing on Defendant's requests was set for November 25, 2008 before Magistrate
 5 Judge Trumbull, who is hearing all discovery-related matters in this case.² Apparently, Plaintiff
 6 seeks to vacate the hearing before Judge Trumbull on the ground that Defendant's requests, if
 7 granted, would infringe her privacy rights. Plaintiff also states that she feels "discriminated
 8 against or not having equal rights in magistrate judge court room." Pleading filed November 10,
 9 2008, at 1.

10 Having reviewed the papers filed in connection with the pending motions, the Court finds
 11 no basis for vacating the hearing. Defendant argues that Plaintiff has placed her mental condition
 12 in issue by claiming to have suffered emotional distress damages in connection with her attempt
 13 to secure subsidized housing from Defendants, and it does appear that such damages are the only
 14 damages Plaintiff seeks to recover. In light of the undisputed fact that Plaintiff suffers from
 15 various pre-existing mental conditions, including bi-polar disorder, Defendant contends that the
 16 medical examination and records will shed light on issues of causation critical to Defendant's
 17 case. Without expressing any opinion as to the merits of Defendant's arguments or whether
 18 Defendant's concerns are outweighed by Plaintiff's right to privacy, the Court notes that
 19 Defendant's requests are within the realm of relief available under Rules 35 and 37. Plaintiff
 20 also has provided no factual basis for her contention that she has received unfair or
 21 discriminatory treatment before the presiding Magistrate Judge. Because the issues in dispute are
 22 well within the competence of the Magistrate Judge, the Court declines to vacate the hearing. If
 23 either party is dissatisfied with the outcome of the hearing, that party may seek relief under the
 24 appropriate provisions of this Court's local rules. Accordingly, Plaintiff's motion will be denied
 25
 26

27
 28 ² For administrative reasons, the Court was unable to address Plaintiff's request until after
 the scheduled hearing occurred.

1 *nunc pro tunc* to November 25, 2008.³

2
3 **IT IS SO ORDERED.**

4 DATED: 11/26/08

5 
6 JEREMY FOGEL
7 United States District Judge

28

³ *See supra* note 2.

1 This Order has been served electronically upon the following persons:

2 Cesar Javier del Peral cesar.delperal@dfeh.ca.gov

3 Eve Helayne Lewin Wagner , Esq ewagner@swattys.com

4 James A. Scharf james.scharf@usdoj.gov, mimi.lam@usdoj.gov

5 Laurie Beth Hiller lhiller@swattys.com

6 Lindsey A. Urbina Lindsey.Urbina@dfeh.ca.gov, Voneciel.Gaines@dfeh.ca.gov

7 Notice of this Order has been delivered by other means to:

8 Cathy Enwere
1263 Madera Ave.
9 Menlo Park, CA 94025

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28